IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3793 OF 2006

In

APPEAL (L) NO.921 OF 2006

In

ARBITRATION PETITION NO.259 OF 2005

Suburban Industries Ltd. : Appellant/
Orig.Petitioner

V/s.

Hindustan Petroleum Corporation Ltd. : Respondent/
Orig.Respondent

...

Mr.Arif Bookwala, senior counsel, with Mr.Naushad Engineer i/b. Zohair & Co., for the appellant.

Mr.M.D.Siodia with Ms D.S.Retiwala i/b. M/s.Rustomjee & Ginwala for the respondent.

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CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATE : NOVEMBER 30, 2006.

P.C.

Heard.

2. It is not in dispute that on 13.9.2005, the appellant's Advocate Mr.D'Lima was present and the

impugned order came to be passed in his presence. The reason for delay in filing the appeal, as set out in the affidavit-in-support of the Notice of Motion, is that said Advocate did not inform the appellant-company about the progress of the matter. According to the appellant-company, its representative Mr.B.K.Ray was constantly pursuing and following up the matter with their Advocates. Ultimately, by letter dated 21.8.2006 addressed to their Advocates M/s.D'lima & Associates, the appellant enquired about the matter and there was no reply to the said letter. By letter dated 20.5.2006 addressed to the appellant-company, their Advocates M/s.D'lima & Associates forwarded the case papers pertaining to the said arbitration petition. The said letter dated 20.5.2006 was received by the appellant-company on 28.8.2006. Thereafter, certified copy of the impugned order was obtained and the appeal has been filed.

3. The affidavit-in-support of the Notice of Motion does not inspire confidence. It is improbable, if not impossible, that the representative of the company would not have been told about the progress of the case by the appellant's Advocates. It also does not stand to reason that if the representative of the appellant-company who was following up the matter was not informed about the progress of the case, the company would send the letter to

the Advocates on 21.8.2006 under Certificate of Posting. The whole explanation is make believe. When we asked the senior counsel for the appellant as to whether any complaint was made with regard to the conduct of the appellant's Advocates, his answer was in the negative. The first letter of the appellant's company to their Advocates is dated 21.8.2006 i.e. more than 11 months after the impugned order came to be passed. That itself shows the negligence on the part of the appellant-company.

4. All in all, gross delay of 419 days is not sufficiently explained in the affidavit-in-support of the Notice of Motion.

5. We, accordingly, dismiss the Notice of Motion.

R.M. LODHA, J.

S.A. BOBDE, J.